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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:)	Chapter 11
)	
BCE WEST, L.P., <i>et al.</i> ,)	Case Nos. 12547
)	Through 12570 ECF CGC
Debtors.)	
)	Jointly Administered
EID # 38-3196719)	
)	DEBTORS' RESPONSE TO
)	LIFTPAK'S MOTION FOR STAY
)	RELIEF AND ALLOWANCE OF
)	CLAIM
)	
LIFTPAK SERVICES, L.C.,)	
)	
Movant,)	
)	
v.)	
)	
BCE WEST, L.P., et al., Debtors; BANK OF)	
AMERICA; G.E. CAPITAL; and CITIZENS)	
BANK OF RHODE ISLAND,)	
)	
Respondents.)	

Comes now BC Great Lakes, L.L.C. ("Debtor") and files its response to the "Liftpak Services, L.C. Combined Motion (A) for Relief from Automatic Stay Pursuant to 11 U.S.C. 362 and Abandonment of Property Pursuant to 11 U.S.C. 554, (B) for Allowance and Immediate

1 Payment of an Administrative Claim Pursuant to 11 U.S.C. 503, and (C) for Allowance and
2 Immediate Payment of a Claim Pursuant to 11 U.S.C. 365” (the “Motion”). In support of this
3 response Debtor states the following.

4
5 1. The Motion is procedurally defective in that at least a portion of the relief
6 requested seeks to recover money or property that is either in possession of the Debtor, in
7 possession of a third party or subject to an escrow arrangement in which there are multiple
8 parties in interest. Liftpak has, in fact, styled the pleading as if it was an adversary
9 complaint, but still calls it a motion and seeks to have a “Contested Matter Number”
10 assigned to the pleading.
11

12 2. As a consequence of the foregoing, the Motion is subject to the provisions
13 of Part VII, Federal Rules of Bankruptcy Procedure. As such, the Debtor files this
14 response pursuant to Rule 7012(b)(6), Federal Rules of Bankruptcy Procedure. The
15 Motion fails to state a claim for which relief can be granted, and should be dismissed.
16

17 3. If further response is required, the Debtor states the following:
18

19 a. The Debtor is not in possession of any of the trash compactors as
20 alleged. Consequently, there is no reason for the Court to entertain a Section 554
21 motion, nor is there any basis for any modification of the Section 362 automatic
22 stay.
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24
25
26

b. Liftpak does not have an administrative claim for any compactor unless Liftpak can show the compactor was stolen or sold post-petition. That is an essential element of a claim under 11 U.S.C. § 503(b).

c. The cash generated by the sale of the compactors, as well as other equipment, has been placed in a separate Equipment Account. Any cash in the Equipment Account has obvious value to the Debtor and its creditors. Indeed, these funds are subject to multiple lien claims to which Liftpak may be subordinate.

d. Liftpak seeks immediate payment for its claim, but offers no reason for such preferred treatment. The timing for payment of any administrative claim is left to this Court's discretion.

e. The amount of the claim asserted by Liftpak is erroneous and exaggerated. Liftpak is entitled to no more than the fair market value of the compactors.

4. As a consequence of the foregoing, the Debtor requests that after consideration of the Motion and objections and responses filed, an order be entered denying the relief requested.

RESPECTFULLY SUBMITTED this August 24, 1999.

DEBTORS AND DEBTORS IN POSSESSION

By: /s/ Rey Stroube
One of their Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 24 or 25, 1999, the foregoing document was served by e-mail or by first class United States Mail, postage prepaid, to counsel for Liftpak and on the Official Service List # 11 dated July 22, 1999.

/s/ Marilyn Schoenike